

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

HALLIS R. SISCO,

Petitioner,

v.

STANISLAUS COUNTY SHERIFF'S
DEPARTMENT,

Respondent.

No. 1:20-cv-00947-DAD-JLT (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
PETITION WITHOUT PREJUDICE

(Doc. No. 11)

Petitioner Hallis R. Sisco is a state prisoner proceeding *pro se* and *in forma pauperis* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2554. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 302.

On July 10, 2020, the assigned magistrate judge issued findings and recommendations recommending that the petition be dismissed without prejudice due to a lack of jurisdiction. In particular, the assigned magistrate judge found that petitioner failed to name a proper respondent and failed to exhaust his claims by first presenting them to the highest state court prior to seeking federal habeas relief. (Doc. No. 11.) The pending findings and recommendations were served on petitioner with notice that any objections thereto were to be filed within thirty (30) days of the service of the findings and recommendations. (*Id.* at 7.) To date, no objections have been filed, and the time in which to do so has now passed.

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1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a
2 *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the
3 findings and recommendations are supported by the record and proper analysis.

4 In addition, having concluded that the pending petition must be dismissed, the court now
5 turns to whether a certificate of appealability should issue. A state prisoner seeking a writ of
6 habeas corpus has no absolute entitlement to appeal a district court's denial of his petition, and an
7 appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335–36
8 (2003); 28 U.S.C. § 2253. Where, as here, the court denies habeas relief on procedural grounds
9 without reaching the underlying constitutional claims, the court should issue a certificate of
10 appealability “if jurists of reason would find it debatable whether the petition states a valid claim
11 of the denial of a constitutional right and that jurists of reason would find it debatable whether the
12 district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).
13 “Where a plain procedural bar is present and the district court is correct to invoke it to dispose of
14 the case, a reasonable jurist could not conclude either that the district court erred in dismissing the
15 petition or that the petitioner should be allowed to proceed further.” *Id.* In the present case, the
16 court finds that reasonable jurists would not find the court's determination that the petition should
17 be dismissed debatable or wrong, or that petitioner should be allowed to proceed further.
18 Therefore, the court declines to issue a certificate of appealability.

19 Accordingly:

- 20 1. The findings and recommendations issued on July 10, 2020 (Doc. No. 11) are
21 adopted in full;
- 22 2. The petition for writ of habeas corpus is dismissed without prejudice due to a lack
23 of jurisdiction as a result of petitioner's failure to name a proper respondent and
24 failure to first exhaust his claims in state court;

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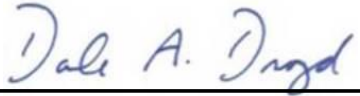
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1 3. The court declines to issue a certificate of appealability; and

2 4. The Clerk of Court is directed to close this case.

3 IT IS SO ORDERED.

4 Dated: **September 1, 2020**


UNITED STATES DISTRICT JUDGE